

**VICTORIA L. FRANCIS**  
**Assistant U.S. Attorney**  
**U.S. Attorney's Office**  
**P.O. Box 1478**  
**Billings, MT 59103**  
**2929 Third Ave. North, Suite 400**  
**Billings, MT 59101**  
**Phone: (406) 247-4633**  
**Fax: (406) 657-6989**  
**E-mail: victoria.francis@usdoj.gov**

**ATTORNEY FOR DEFENDANT**  
**United States of America**

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF MONTANA**  
**MISSOULA DIVISION**

<b>BRANDY HAMILTON,</b>  <b>Plaintiff,</b>  <b>vs.</b>  <b>UNITED STATES OF AMERICA,</b>  <b>Defendant.</b>	<b>CV 06-141-M-DWM</b>  <b>DEFENDANT'S MOTION TO DISMISS</b>
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The United States, by and through counsel, Victoria L. Francis, Assistant United States Attorney, respectfully moves the court pursuant to Fed. R. Civ. P. 12(b)(1) and (6), for an order dismissing plaintiff's amended complaint.

The grounds for this motion are that the statute of limitations under the Federal Tort Claims Act bars the claim set forth in the amended complaint against the United States. This motion is based upon the allegations in the amended complaint on file herein, and the supporting brief filed herewith. The standard of review is clear in a motion to dismiss. For the purposes of the motion, the allegations in the complaint are to be construed in the light most favorable to the plaintiff and its allegations are taken as true. Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure*, Vol. 5B Section 1357, p. 417 (2004). Although the United States denies certain allegations, even if the allegations are taken as true, the complaint is barred by the statute of limitations.

Counsel for plaintiff has been contacted, and he advised that he objects to this motion to dismiss.

**DATED** this 3rd day of December, 2007.

**WILLIAM W. MERCER**  
**United States Attorney**

/s/ Victoria L. Francis  
**VICTORIA L. FRANCIS**  
**Assistant U.S. Attorney**  
**Attorney for Defendant**

**CERTIFICATE OF SERVICE**

I certify that on the 3rd day of December, 2007, the United States Attorney's Office served copies of the attached document by CM/ECF or first class mail, postage prepaid, as follows:

Addressee(s):

Milton Datsopoulos, Esq.  
DATSOPOULOS, MACDONALD & LIND, P.C.  
201 W. Main, Suite 201  
Missoula, Montana 59802  
(406) 728-0810 - phone  
(406) 543-0134 - fax  
Attorney for Plaintiff

/s/ Victoria L. Francis

**VICTORIA L. FRANCIS**

**Assistant U.S. Attorney**

**Attorney for Defendant**